

FRED R., ANNA R., AND
KRISTINE A. CERMINARO

IBLA 80-287

Decided March 31, 1980

Appeal from decision of California State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer CA 6627.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications:
Generally -- Oil and Gas Leases: Lands Subject To

The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), expressly precludes leasing in national parks and national monuments. Therefore, the Department of the Interior has no authority to issue an oil and gas lease for lands in the Death Valley National Monument and an offer to lease land within the monument must be rejected.

APPEARANCES: Fred R., Anna R., and Kristine A. Cerminaro, pro sese.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Fred R., Anna R., and Kristine A. Cerminaro appeal from a decision of the California State Office, Bureau of Land Management (BLM), dated December 21, 1979, rejecting appellants' offer to lease approximately 10,000 acres within Death Valley National Monument for oil and gas.

BLM rejected the offer for the following reasons: (1) the lands applied for are within Death Valley National Monument. 43 CFR 3101.1-1(a) specifies that lands in national parks and monuments are not subject to leasing under the Act of February 25, 1920; (2) the offer exceeds the 2,560 acreage limitation of 43 CFR 3110.1-3(a); (3) the lands are described in metes and bounds rather than by legal subdivision, section, township, and range, in violation of 43 CFR 3101.1-4(a); and (4) item 6 of the offer form was not completed in violation of 43 CFR 3111.1-1(d).

[1] Section 1 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), provides in relevant part: "Deposits of * * * oil * * * or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands * * * in national parks and monuments shall be subject to disposition in the form and manner provided by this chapter to citizens of the United States * * *." The exclusion of lands in national parks and monuments from oil and gas leasing is embodied in 43 CFR 3101.1-1(a)(1).

BLM ascertained that the lands described in the offer are located within the Death Valley National Monument. A map submitted by appellants with the offer also shows the land to be within the national monument and therefore unavailable for leasing. 1/

Appellants say they are unaware of any law exclusively prohibiting oil and gas leasing or prospecting. They also request a waiver of 43 CFR 3101 1-1(a)(1). Duly promulgated regulations have the force and effect of law, which the Board of Land Appeals is bound to follow and does not have the authority to waive. David V. Udy, 45 IBLA 389 (1980). In this instance the Mineral Leasing Act specifically excludes land in national monuments from operation of the Act. This Department has no authority to waive the operation of Acts of Congress, and where Congress has expressly precluded leasing for minerals in national monuments, applications for lease under the Mineral Leasing Act must be rejected. Appellants recourse, if any, is with Congress.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge

1/ The statutory prohibition against leasing in national monuments resolves the appeal, and there is no need to discuss the additional reasons given by BLM for rejecting the offer. Those reasons, however, are also correct.

